

Eric D. Virshbo, OSB#021078
MacMILLAN, SCHOLZ & MARKS, P.C.
900 SW Fifth Avenue, Suite 1800
Portland, OR 97204
Phone: (503) 224-2165
Fax: (503) 224-0348
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ALASKA NATIONAL INSURANCE COMPANY,
an Alaska corporation,

Plaintiff,

v.

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation; UNITED STATES OF
AMERICA, BONNEVILLE POWER
ADMINISTRATION, DEPARTMENT OF
ENERGY,

Defendants.

Case No.:

COMPLAINT
(Negligence; Premises Liability)

CLAIM SUBJECT TO MANDATORY
ARBITRATION

Prayer: \$26,096.89
ORS 21.160(1)(b)

Plaintiff for its CLAIM FOR RELIEF against defendants, alleges:

JURISDICTION AND VENUE

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1. 1

2 This court has original jurisdiction of this claim pursuant to the provisions of the Federal
3 Tort Claims Act, 28 U.S.C. 1346(b) in that this is a civil action on a claim against the United
4 States for money damages for personal injury.

2. 5

6 On or about September 14, 2017, a claim was filed with Bonneville Power
7 Administration on behalf of Plaintiff; the Department of Energy failed to finally resolve the
8 claim within six months after its submission, and this suit was commenced within six months of
9 the denied claim. Plaintiff received a denial letter dated February 5, 2018 from attorney Paul F.
10 Mautner, of the Department of Energy.

3. 11

12 Venue for this action is proper in this Judicial District under 15 U.S.C. 1319 by reason
13 that the subject incident occurred within Morrow County, within this Judicial District.

14 PARTIES

4. 15

16 At all times material hereto:

17 A) The Bonneville Power Administration (hereinafter "BPA") is a duly organized
18 federal agency and is a division of the United States Department of Energy.

19 B) The BPA operate in the State of Oregon and its principal place of business is 905
20 NW 11th Avenue, Portland, OR, Multnomah County.

21 C) Portland General Electric (hereinafter "PGE") is an Oregon corporation, duly
22 authorized to do business as an electric utility company in the State of Oregon.

23 D) PGE operates in the State of Oregon and its principal place of business is 121 SW
24 Salmon St., Portland, OR, Multnomah County.

1 E) The United States of America by and through the BPA was the owner of the
2 generating station at issue in this complaint.

3 F) The operator of the aforementioned BPA generating station was PGE, by and
4 through a Large Generator Interconnection Agreement.

5 G) Plaintiff was the insurer of Apollo Sheet Metal, Inc. (hereinafter "Apollo") who
6 contracted with PGE to do work on the aforementioned BPA generating station.

7 STATEMENT OF FACTS

8 5.

9 On or about September 27, 2016, James Healy and Adam Winburn were working as
10 maintenance, repair, and renovation employees in the course and scope of their employment with
11 Apollo at the Carty Generating station in Boardman, Oregon (hereinafter "the Station"). While
12 working on the Penthouse Deck at the Station, Mr. Healy and Mr. Winburn were seriously
13 injured when an event under the control of the BPA and triggered by PGE caused several
14 unexpected high velocity pressure releases at the station seeming like severe explosions.

15 6.

16 As a direct and proximate result of these releases, Mr. Healy and Mr. Winburn suffered
17 the following personal injuries, some of which may be permanent: hearing loss and post-
18 traumatic stress disorder. Treatment of these injuries necessitated extensive medical treatment.

19 7.

20 Prior to the incident set forth above, plaintiff had issued to Apollo, as its insured, a policy
21 of workers' compensation insurance. Pursuant to the terms of the aforementioned insurance
22 policy, plaintiff was obligated to pay, and did pay, workers' compensation benefits in the sum of
23 \$26,096.89, consisting of \$2,345.29 in medical expenses and \$964.85 in indemnity to, or on
24 behalf of, Mr. Healy, and \$11,971.09 in medical expenses and \$10,815.66 to, or on behalf of,
25 Mr. Winburn. The sums paid by plaintiff were reasonable, necessary, and a direct result of the

1 aforementioned pressure releases. Plaintiff is hereby subrogated pursuant to ORS 656.591 to all
2 rights of its insured against defendant to the extent of its payments.

3 **FIRST CLAIM FOR RELIEF**

4 (Common-Law Negligence)

5 8.

6 Plaintiff hereby incorporates paragraphs 1 through 7 above.

7 9.

8 BPA and PGE (collectively "Defendants") were negligent in one or more of the
9 following particulars:

- 10 (a) In failing to maintain a safe work premise;
- 11 (b) In failing to inspect the Station for any potential high velocity pressure
12 releases;
- 13 (c) In failing to have electricity at the Station turned off while Apollo
14 employees were working;
- 15 (d) In failing to warn Mr. Healy and Mr. Winburn of the potential pressure
16 release hazards posed by working on the Station;
- 17 (e) In failing to provide proper supervision and control of the Station and
18 work being done thereon.

19 10.

20 As a reasonably foreseeable result of defendants' negligence, plaintiff was obligated to
21 pay damages to its insured as set forth above in Paragraph 7 above.

22 **SECOND CLAIM FOR RELIEF**

23 (Oregon Employers Liability Law)

24 11.

25 Plaintiff hereby incorporates paragraphs 1 through 10 above.

12.

On or about September 27, 2016, the work being performed by Mr. Healy and Mr. Winburn, as described in paragraph 5 above, involved risk or danger.

13.

At all material times herein, Defendants, and each of them, maintained a right of control or exercised actual control over the Station, including generation of electricity and the work being performed by Mr. Healy and Mr. Winburn.

14.

Pursuant to Oregon Law, ORS 654.305, Defendants, and each of them, were required to “use every device, care and precaution that is practicable to use for the protection and safety of life and limb...without regard to...cost.”

15.

Defendants, and each of them, failed to use the device, care and precaution listed in paragraph 14 above, in one or more of the particulars set forth in paragraph 9.

16.

Mr. Healy and Mr. Winburn are in the class of people meant to be protected by ORS 654.305, as indirect employees of PGE and BPA.

17.

The harm to Mr. Healy and Mr. Winburn is of the kind that the statute was intended to prevent.

18.

As a result of defendants’ failure to use this care and precaution, Mr. Healy and Mr. Winburn sustained the injuries set forth in paragraph 6, and plaintiff sustained economic damages as set forth in paragraph 7.

THIRD CLAIM FOR RELIEF

(Premises Liability)

19.

Plaintiff hereby incorporates paragraphs 1 through 10 above.

20.

Mr. Healy and Mr. Winburn were business invitees of defendant BPA.

21.

As occupier and/or owner of the Station, defendant had a duty to make the premises reasonably safe for Mr. Healy and Mr. Winburn's visit and to exercise reasonable care to discover any condition that created an unreasonable risk of harm to Mr. Healy and Mr. Winburn.

22.

Defendant was negligent in one or more of the following particulars:

- (a) In failing to eliminate the dangerous condition of the potential for unexpected high velocity pressure releases; and
- (b) In failing to warn Mr. Healy and Mr. Winburn of the dangerous condition of potential pressure releases posed by working on the Station.

23.

As a reasonably foreseeable result of BPA's negligence, plaintiff was obligated to pay damages to its insured as set forth above in Paragraph 7 above.

WHEREFORE, plaintiff prays for judgment against defendant as follows:

- (a) For plaintiff's First Claim for Relief, the sum of \$26,096.89;
- (b) For plaintiff's Second Claim for Relief, the sum of \$26,096.89;
- (c) For plaintiff's Third Claim for Relief, the sum of \$26,096.89;
- (d) For plaintiff's costs and disbursements incurred herein, and such other relief as the Court deems proper.

1
2 DATED: July 31, 2018.

MacMILLAN, SCHOLZ & MARKS, P.C.

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4 By: /s/ Eric D. Virshbo
5 ERIC D. VIRSHBO, #021078
6 E-mail: evirshbo@msmlegal.com
7 Of Attorneys for Plaintiff
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